

CCRB INVESTIGATIVE RECOMMENDATION

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|---|-------------------------------------|---------------------------|---|------------------------------------|---------------------------------|
| Investigator: Abigail Marean | Team: Team # 3 | CCRB Case #: 200400691 | <input checked="" type="checkbox"/> Force | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Thursday, 12/04/2003 12:45 PM | Location of Incident: § 87(2)(b) | Precinct: 101 | 18 Mo. SOL 6/4/2005 | EO SOL 6/4/2005 | |
| Date/Time CV Reported Thu, 01/15/2004 7:30 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 01/22/2004 4:58 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. POM John Occhipinti | 04010 | 930866 | 101 PCT |
| 2. LT Gary Messina | 00000 | 874530 | 101 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.LT Gary Messina | Abuse: LT Gary Messina stopped and questioned § 87(2)(b) | |
| B.LT Gary Messina | Force: LT Gary Messina used physical force against § 87(2)(b) | |
| C.POM John Occhipinti | Force: PO John Occhipinti used physical force against § 87(2)(b) | |
| D.LT Gary Messina | Abuse: LT Gary Messina frisked and searched § 87(2)(b) | |
| E.LT Gary Messina | Abuse: LT Gary Messina refused to provide his name and shield number to § 87(2)(b) | |

Synopsis

On December 4, 2003, at approximately 12:45 PM, § 87(2)(b) was inside § 87(2)(b) a residential building. § 87(2)(b) alleged that LT Messina and PO Occhipinti entered the building, stopped and questioned him (**Allegation A**, § 87(2)(g)). A physical altercation ensued, in which § 87(2)(b) alleged that the officers grabbed him, threw him onto the ground and jumped on him (**Allegations B and C**, § 87(2)(g)). § 87(2)(b) was then handcuffed and searched (**Allegation D**, **exonerated**). § 87(2)(b) was arrested for criminal trespassing and resisting arrest. He was brought to the stationhouse, where he asked LT Messina for his name and shield number, which LT Messina refused to provide (**Allegation E**, § 87(2)(g)).

Summary of Complaint

This complaint was a spin-off of IAB log #04-01893 (Enc. 3A-B), filed on January 20, 2004. § 87(2)(b) provided a telephone statement on February 2, 2004 (Enc. 3D). He provided an official statement on February 5, 2004 (Enc. 3E-G). These statements are consistent, except where noted below. On December 4, 2003, at approximately 12:45 PM, § 87(2)(b) was walking to § 87(2)(b) to visit a female occupant, § 87(2)(b) § 87(2)(b) could not remember her last name), in apartment § 87(2)(b). § 87(2)(b) has been there many times. § 87(2)(b) and the female, § 87(2)(b) are sex partners. § 87(2)(b) had called § 87(2)(b) earlier to tell her he was coming. § 87(2)(b) entered the building and was waiting for the elevator on the ground floor, inside the building; he was waiting about four minutes. There was no one else waiting in the hallway. Two men entered and went up the stairway. About 2-3 minutes later, two officers came into the building; § 87(2)(b) had heard the door open, then turned around slightly and saw the officers enter the building. One officer, whom § 87(2)(b) later identified as LT Messina, was a white male, about 5'6", 205 lbs., and about 33-34 years old. The second officer, later identified as PO Occhipinti, looked shorter, about 22 years old, with dark brown hair. They asked § 87(2)(b) if he lived there, he told them he did not and the officers asked what he was doing. § 87(2)(b) told them that he was going to apartment 2B. The officers then asked § 87(2)(b) for ID, and he showed them his New York State driver's license. LT Messina then slammed § 87(2)(b) onto the ground by grabbing § 87(2)(b) two arms with his two hands and knocking him to the ground. PO Occhipinti then jumped on top of § 87(2)(b) while he was on the ground. § 87(2)(b) cannot remember if he was face down or on his back. Both officers were on top of him. § 87(2)(b) later stated that he did not do anything to resist the arrest, nor did he attempt to hit either officer. § 87(2)(b) asked them what the problem was and what they were doing. Both officers searched § 87(2)(b) going in his pockets. LT Messina then placed § 87(2)(b) in handcuffs while he was on the ground (later § 87(2)(b) said that he did not remember who handcuffed him or the manner in which they did). They patted him down. § 87(2)(b) was wearing a jacket with about six pockets on the outside and jeans. The officers didn't take anything out of his pockets.

The officers took him out to the patrol car, which was a marked RMP. There were no other officers around. § 87(2)(b) was searched again. They did not take anything out of his pockets. They did not ask him to take any clothing off. § 87(2)(b) was standing outside for about 4-5 minutes. He was taken to the precinct, where he was searched again. His pockets were emptied, which included keys, gum, and money. § 87(2)(b) did not have anything illegal. § 87(2)(b) asked LT Messina for his name and shield number, but he just turned and walked away. § 87(2)(b) then asked PO Occhipinti for LT Messina's name and shield number. PO Occhipinti gave § 87(2)(b) LT Messina's name but said that Lieutenants don't have shield numbers (In his telephone statement, § 87(2)(b) stated that when he asked PO Occhipinti for LT Messina's name and shield number, PO Occhipinti approached LT Messina, who wrote down his name on paper and gave it to PO Occhipinti, who then gave it to § 87(2)(b)). § 87(2)(b) did not ask PO Occhipinti for his name or shield number because he knew that this officer was filling out the paperwork, therefore the name would be accessible later. § 87(2)(b) later got his name off of the voucher.

§ 87(2)(b) was in the holding cell about nine hours. § 87(2)(b) told an officer that as soon as he got out he was going to file a complaint. PO Occhipinti told him that he had looked like he had a gun in his back pocket, that he resisted arrest and was loitering. § 87(2)(b) went to central booking; PO Occhipinti went with him. He was charged with loitering and resisting arrest. § 87(2)(b) has an

attorney. § 87(2)(b) cell phone and about \$800 were vouchered. § 87(2)(b) was carrying \$800 on him because it was the beginning of December and he needed to pay bills. § 87(2)(b) got the vouchered items back several days later.

Results of Investigation

Officer Identification

§ 87(2)(b) identified LT Messina by asking PO Occhipinti for his name, which was provided. He identified PO Occhipinti by the arrest paperwork he received.

Officer Statements

LT Messina was interviewed at the CCRB on April 16, 2004 (Enc. 4A-E). PO Occhipinti was interviewed at the CCRB on April 20, 2004 (Enc. 4F-J).

LT Messina

On December 4, 2003, at approximately 12:40 PM, LT Messina observed three individuals, one known to him as a drug dealer in that location (§ 87(2)(b) LT Messina has had prior interactions with him, he is a known drug dealer in the command), entering into § 87(2)(b). They were walking from the direction of 1530 Hassock Avenue. At that time there was a dispute going on between two drug factions. Shawn Colley belonged to the faction on the north side of the projects, and § 87(2)(b) is considered the south side. When the two factions meet each other, it usually results in violence. That is why LT Messina followed them to the building. LT Messina entered the building about 30 seconds after the group of three did. § 87(2)(b) who was already inside the building, opened the door for the three individuals and let them in. § 87(2)(b) remained inside the lobby. When LT Messina entered the building, the three individuals who he had originally seen were gone, but § 87(2)(b) was still in the lobby. Inside the lobby, about 20 feet ahead on the left is the staircase. The elevator is before the staircase, about 15 feet ahead, on the right. The lobby is about 20 ft x 20 ft. When LT Messina entered, § 87(2)(b) was the only person in the lobby. He was standing by the staircase, looking up the stairs. As LT Messina entered the lobby, § 87(2)(b) turned toward them and began walking toward the door. LT Messina then stopped him and asked him what he was doing in the building. § 87(2)(b) said that he did not live there, and put his hand into his back pocket. LT Messina told § 87(2)(b) not to put his hands into his pockets and to take them out. LT Messina requested this for his own personal safety. § 87(2)(b) began backing up against the wall, so his back was against the wall and his hands were in his pockets. LT Messina told him to take his hands out of his pockets multiple times, about six. § 87(2)(b) refused. LT Messina was standing about three feet from § 87(2)(b). PO Occhipinti was standing next to LT Messina. § 87(2)(b) was not saying anything.

LT Messina decided that he needed to make sure § 87(2)(b) didn't have anything in his pocket that could hurt him. He then reached around § 87(2)(b) body and grabbed his hand and kept it inside his pocket. PO Occhipinti helped him do this. § 87(2)(b) began struggling with them; he was swinging with his one free arm, although he did not punch LT Messina. He refused to be taken under control. LT Messina wrestled him to the ground and handcuffed him. LT Messina brought § 87(2)(b) to the ground because he was resisting and that was the only way to get him under control. § 87(2)(b) resisted up until he was handcuffed, at which point he became compliant. The officers then frisked § 87(2)(b). § 87(2)(b) wallet was in his back pocket. LT Messina again asked him why he was in the building, § 87(2)(b) could not give a legitimate reason for being in the building. He was arrested for criminal trespassing and resisting arrest. § 87(2)(b) was compliant when being removed from the building. He was searched out at the car. § 87(2)(b) was brought back to the stationhouse. PO Occhipinti processed the arrest. § 87(2)(b) was searched again when he was brought into the cell. When § 87(2)(b) was standing in front of the desk, he asked LT Messina for his name and shield number, to which LT Messina replied, "LT Gary Messina." He did not provide a shield number because lieutenants do not have them. Initially, § 87(2)(b) was belligerent. After he was handcuffed and brought into the stationhouse, he was reasonable. § 87(2)(b) did not raise his voice.

LT Messina explained that criminal trespassing is entering or remaining in a building without permission. This location was a housing building and there are signs posted in every housing building, stating that you cannot loiter or remain in the building without permission or authority. According to the Penal Law of

the State of New York, the police department is the agent for the housing authority, so they determine if people belong in the building or not. Tenants are allowed in the building, and other would be allowed as well if they provided a legitimate reason for being there, such as visiting someone in a specific apartment. LT Messina did not remember § 87(2)(b) mentioning anything about visiting apartment 2B or anyone named § 87(2)(b)

PO Occhipinti

PO Occhipinti corroborated LT Messina's account of stopping § 87(2)(b). Concerning the force used in detaining § 87(2)(b), PO Occhipinti added that § 87(2)(b) began to move, as if he was going to run away. LT Messina put him up against the wall by putting his hands against § 87(2)(b)'s shoulders to keep him from running. § 87(2)(b) resisted by trying to move away. PO Occhipinti grabbed for § 87(2)(b)'s left hand to make sure he didn't pull anything out. § 87(2)(b) wasn't saying anything. § 87(2)(b) then lost his footing and they all fell to the ground. LT Messina was on top of § 87(2)(b). PO Occhipinti was next to both of them with his hand on his arm. PO Occhipinti could not recall whether § 87(2)(b) was on his back or face down.

PO Occhipinti added that § 87(2)(b) asked him for his name and shield number at the stationhouse, which he verbally provided. He also stated that he provided LT Messina's name to § 87(2)(b) and told LT Messina that § 87(2)(b) had made the request. LT Messina then went into § 87(2)(b) cell to provide his name as well.

Police Documentation

The **Stop and Frisk Report** (Enc. 5B-C) was filed on the date of incident and signed by both PO Occhipinti and LT Messina. It states that § 87(2)(b) was acting as a lookout, had his hand in his pocket with a suspicious bulge and was arrested for criminal trespassing and resisting arrest. It also documents that force was used, with an officer using his hands and putting § 87(2)(b) against a wall.

§ 87(2)(b) History of Charges and Convictions

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Disposition of this Case

§ 87(2)(b) has a court appearance scheduled for § 87(2)(b) regarding this case.

LT Messina's CCRB History

LT Messina has one Abuse – Property Damaged allegation, one Force – Push/Shove allegation and one Discourtesy – Curse allegation substantiated in case #9601222 (Enc. 2A-E). LT Messina received charges for these allegations.

PO Occhipinti's CCRB History

PO Occhipinti has no prior CCRB allegations (Enc. 2F).

Conclusions and Recommendations

Undisputed Facts

Undisputed in this case is that § 87(2)(b) was near the elevator in § 87(2)(b) when he was stopped and questioned by LT Messina and PO Occhipinti. A physical altercation ensued, which resulted in all three individuals on the floor. Not in dispute that § 87(2)(b) was handcuffed and arrested for criminal trespassing and resisting arrest.

Disputed Facts

In dispute is whether § 87(2)(b) provided a reason as to why he was inside § 87(2)(b). Also in dispute is whether § 87(2)(b) had his hand in his rear pocket while being questioned by the two officers. Disputed is whether LT Messina and PO Occhipinti grabbed § 87(2)(b) and

brought him to the floor. Disputed is whether § 87(2)(b) asked LT Messina and PO Occhipinti for their names and shield numbers, and whether the officers provided them.

Credibility

§ 87(2)(b)

§ 87(2)(g)

LT Messina and PO Occhipinti

§ 87(2)(g)

Allegation A: LT Messina stopped and questioned § 87(2)(b)

§ 87(2)(b) alleged that LT Messina unjustly stopped and questioned him. LT Messina stated that he had reasonable suspicion to enter the building, based on his observation of a known drug dealer, accompanied by two others, enter a location in which he did not live, indicating a possible criminal trespassing violation. He stated that § 87(2)(b) was inside the building and could not provide a reason as to why he was there. As outlined by Penal Law 140.10 (e), “A person is guilty of criminal trespass in the third degree when he knowingly enters or remains unlawfully in a building or upon real property, where a building is used as a public housing project in violation of conspicuously posted rules or regulations governing entry and use thereof,” (Enc. 1A). § 87(2)(g)

Allegation B: LT Messina used physical force against § 87(2)(b)

Allegation C: PO Occhipinti used physical force against § 87(2)(b)

Allegation D: LT Messina searched § 87(2)(b)

§ 87(2)(b) alleged that LT Messina and PO Occhipinti grabbed him, knocked him to the ground, jumped on top of him and searched him. LT Messina and PO Occhipinti acknowledge that there was a physical altercation which transpired with § 87(2)(b). They both stated that § 87(2)(b) withheld his hand in his rear pocket and refused to remove it while being detained, which was documented in the Stop and Frisk Report (Enc. 5B-C), filed on the date of incident. Both officers thought that § 87(2)(b) may have had a weapon concealed in the pocket, and therefore feared for their safety. § 87(2)(b) stated that while at the precinct, the officers told him that he had looked as though he was concealing a weapon. After multiple requests for § 87(2)(b) to remove his hand, the officers decided that they needed to restrain him in order to determine what was in § 87(2)(b) pocket, their physical safety in mind. Both officers stated that an effort was made to keep § 87(2)(b) left hand secure. In doing so, § 87(2)(b) resisted and was brought to the ground, where he was searched and handcuffed. § 87(2)(b) claimed that he did nothing to resist against the officers, § 87(2)(g)

Allegation E: LT Messina refused to provide his name and shield number to § 87(2)(b)

§ 87(2)(b) alleged that he asked LT Messina for his name and shield number, which LT Messina refused to do. He then asked PO Occhipinti for LT Messina's name and shield number, and PO Occhipinti provided the name. LT Messina stated that he verbally provided his name to § 87(2)(b) and that lieutenants do not have shield numbers. PO Occhipinti corroborated LT Messina's statement. § 87(2)(b) had LT Messina's name and shield number when he filed this complaint, indicating he either received it from PO Occhipinti, as he claimed, or from LT Messina, who did provide it. In his telephone statement, § 87(2)(b) stated that LT Messina eventually wrote down his name on paper, when approached by PO Occhipinti on the subject, and gave it to PO Occhipinti, who then gave it to § 87(2)(b). In his official statement given at the CCRB, § 87(2)(b) stated LT Messina simply refused to provide his name; § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: